

1 **BEFORE THE HEARING OFFICER**
2 **APPOINTED BY THE STATE SUPERINTENDENT**
3 **OF PUBLIC SCHOOLS**
4 **STATE OF NEVADA**

5 In the Matter of STUDENT,) DECISION OF THE
6 by and through PARENT,) HEARING OFFICER
7 Petitioners,) December 30, 2015
8 vs.)
9 CLARK COUNTY SCHOOL) Representatives:
10 DISTRICT,) Parent, for STUDENT
11 Respondent.) Daniel Ebihara, Esq.
12) for Clark County School
13) District
14) Hearing Officer:
15) Robert E. Gaston
16)

14 **PROCEDURAL BACKGROUND**

15 This action arises under the Individuals with Disabilities
16 Education Act (IDEA), 20 U.S.C. Section 1400 et. seq., and the
17 Nevada State Statutes and Regulations. (Nevada Administrative
18 Code (NAC), Chapter 388)

19 Petitioners request for a Due Process Hearing was
20 received by Clark County School District on October 19, 2015,
21 with a decision due date of January 2, 2016, if the attempted
22 resolution was unsuccessful. (IHO File Nos. 1,2,&3) A Status
23 Conference, hearing dates, evidence exchange and date for Pre-
24 Hearing Conference were set. (IHO File No. 8). A resolution of
25 the issues was attempted, but unsuccessful. The Due Process

1 Hearing was heard before the Impartial Hearing Officer, Robert E.
2 Gaston, on Monday, December 14, 2015, and Tuesday, December
3 15, 2015, at the Clark County School District GATE offices
4 located at 4040 Pecos-McLeod, Las Vegas, Nevada. The final
5 hearing was on Friday, December 18, 201`5, in the Office of
6 Compliance and Monitoring, of the Clark County School District,
7 4170 McLeod Drive, Las Vegas, Nevada.

8 The Parent, on behalf of the Student, was present during
9 the hearings, but the Student was not present at the request of
10 Parent. Daniel Ebihara, Esq. represented the Clark County School
11 District, along with Michael Harley. At the request of attorney
12 Ebihara, three additional staff members of the Clark County
13 School District were present to assist.

14 The witnesses for Respondent, Clark County School
15 District were: Principal of Student's current High School; Special
16 Education Instructional Facilitator at High School; Transition
17 Specialist, Student Services Division of Clark County School
18 District; Coordinator of Seigle Diagnostic Center; Student's Dance
19 Teacher at the High School; Project Facilitator, Student Services
20 Division of Clark County School District; and, Special Education
21 Teacher at the High School.

22 The witnesses for the Petitioner were: The Independent
23 Evaluator for Petitioner; Supervisor of the Tutor for the Student
24 and the Parent.
25

1 The Petitioner stipulated to the admission of all of the
2 exhibits offered by the Respondent (R 1 through 18 A&B, and
3 Joint Exhibits J 1 through 5, including subparts A through E of
4 Joint Exhibit 5), as well as the Exhibits submitted by the Hearing
5 Officer (HO 1-13) The Respondent stipulated to the admission of
6 all of the exhibits offered by the Hearing Officer, as well as those
7 offered by Petitioner except for two. (P 1 through 11) The
8 Respondent objected to the admission of Petitioner's Exhibit 12
9 which was a letter, dated June 22, 2012 from the United States
10 Department of Education, Office of Special Education and
11 Rehabilitative Services. This was a letter in response to
12 Petitioner's inquiry regarding a student's Transition Services.
13 The Respondent objected on the grounds of lack of foundation.
14 The IHO overruled the objections and admitted the Exhibit. The
15 objection may have been more appropriate in a Court of Law,
16 however, the Administrative Hearings are somewhat more
17 flexible, and the Hearing Officer has broad discretion to admit
18 such evidence for the weight and probative value.
19

20 The Respondent further objected to the admission of
21 Petitioner's Exhibit 13, which was an offer by the Respondent to
22 Petitioner for the resolution of the issues. The Petitioner rejected
23 the offer and refused to sign it. The Respondent objected on the
24 grounds that such an offer is confidential and should not be part
25 of the record. The IHO overruled the objection stating that
information discussed at the Resolution Period was not

1 confidential unless the parties stipulated that it should be
2 confidential. Dispute Resolution Procedures Under Part B of the
3 Individuals with Disabilities Act, 61 IDELR 232, Question D-17
4 (OSEP 2013); Analysis and Comments to the Regulations, Federal
5 Register, Vol. 71, No. 156, Page 46704 (August 14, 2006), Letter
6 to Baglin, 53 IDELR 164 (OSEP 2008). In Friendship Edison Pub.
7 Charter Sch. v. Smith, 561 F. Sup. 2nd 74 (D.D.C. 2008), the
8 District Court held that the hearing officer erred in excluding
9 relevant evidence from a resolution session. Without the
10 agreement of the parties to maintain confidentiality, the
11 document was admitted.

12 Daniel Ebihara, Esq. for the District gave his opening
13 statement, followed by witnesses for Respondent. After the
14 Respondent concluded it's case, the Parent gave her opening
15 statement, followed by witnesses for the Petitioner.

16 Following closing statements by both parties the
17 evidentiary hearing was concluded on December 18, 2015. The
18 record was closed and the matter submitted to the IHO for
19 decision.

20 **FINDINGS OF FACTS**

21 The parties had not stipulated to findings of fact,
22 although there was no disagreement regarding the basic facts
23 and background of the case. Student is currently in the senior
24 year of High School, attending High School in Las Vegas, Nevada.
25 Student resides with the Parents in Las Vegas, Nevada. When

1 Student turned eighteen years old, Parents became General
2 Guardians of the Person and Estate of Student. (R 4) Testimony
3 by both parties indicated the Student had received services under
4 IDEA since the age of three years. Numerous IEP's were
5 conducted during the Student's lifetime from the age of three to
6 the present.

7 Student's academic achievements all fall below the
8 average student, and Student did not pass any of the High School
9 Proficiency Exams. Student has nonetheless acquired sufficient
10 credits to receive an Adjusted High School Diploma.

11 Student's attendance at High School has been
12 outstanding.

13 **FACTOR'S LEADING UP TO THE DUE PROCESS COMPLAINT**

14 During the most recent IEP, Parent indicated that Student
15 should receive more Community Based Instruction to prepare
16 Student for entering a job after graduation from High School.
17 The Special Education Teacher developed a course of study for
18 the Student whereby the Student would receive job training
19 experiences in school, as well as receive exposure to job tasks in
20 the community. (See Testimony of Special Ed. Teacher)

21 The Parent (Petitioner) desired more Community Based
22 Instruction than the school was offering, and requested an
23 Independent Evaluator. The Clark County School District
24 (Respondents) agreed that Parent could hire an Independent
25 Evaluator at the expense of the District.

1 The Independent Evaluator filed a Report (J 4). The
2 conclusion of the Independent Evaluator was that Student needed
3 more Community Based Instruction than the school was currently
4 offering.

5 The IEP Team met and discussed the Report of the
6 Independent Evaluator and the desires of the Parent. The IEP
7 Team discussed alternatives for Student to receive more
8 Community Based Instruction within the school system. One
9 such alternative was the Clark County School District PACE
10 program which provides in school instruction as well intensive
11 Community Based Instruction which would exceed the time
12 suggested by the Independent Evaluator.

13 The Parent rejected the alternative of the PACE program
14 primarily due to the fact that Student would be based in a
15 different school campus away from Student's current High
16 School. Parent strongly believed that Student's experiences
17 during the Senior Year were extremely important, along with the
18 friendships that had been developed in school, and pursuing the
19 PACE program placement would deny Student those Senior Year
20 experiences at her current High School.

21 Parent and District could not come to a resolution which
22 would allow Student to remain in the current High School, and, at
23 the same time, obtain the amount of Community Based
24 Instruction recommended by the Independent Evaluator.

25 Consequently Parent, on behalf of Student, on October

1 19, 2015, filed a Due Process Complaint alleging the Student had
2 been denied Free Appropriate Public Education.

3
4 **ISSUE**

5 **1. Did the District fail to provide FAPE to Student by refusing**
6 **to include 9 hours of community based instruction with a**
7 **“job coach”, and allow the Student to continue to participate**
8 **in regular school instruction and activities.**
9

10 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

11 **Applicable Law:**

12 Students with disabilities have a right to the availability of
13 free appropriate public education (FAPE) 20 U.S.C. section
14 1400(d). The term “free appropriate public education” means
15 special education and related services that are available to the
16 student at no charge to the parent or guardian, that meet the
17 standards of the state educational agency, and conform to the
18 Student’s IEP. 20 U.S.C. section 1402(9). “Special education” is
19 defined, in relevant part, as instruction designed to meet the
20 unique needs of the student. 20 U.S.C. section 1402(29); MAC
21 section 388.115. “Related services” are defined, in relevant part,
22 to mean developmental, corrective and other supportive services
23 as may be required to assist a child to benefit from special
24 education. 20 U.S.C. section 1402 (26); NAC section 388.101.
25 Each eligible student with a disability is entitled to an

1 “individualized education program” which is a written document,
2 specially designed to meet a student’s individualized needs. 20
3 U.S.C. sections 1402(14), 1414 (d)(1). “The purpose of the IEP is
4 to tailor the education to the child; not tailor the child to the
5 education.” Senate Report 105–17 on the IDEA Amendments of
6 1997 at 24 (1997). To ensure that the education program is
7 individualized, schools are required to consider a variety of
8 information including parent input and assessments/evaluations
9 and independent education evaluations of the student. 20 U. S.C.
10 1415 (d)(3); Letter to Anonymous (OSEP), 23 IDELR 563 (1995).

11 Under the IDEA and the decision of the United States
12 Supreme Court in Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), an
13 appropriate educational program must be designed to meet the
14 student’s needs and reasonably calculated to provide the student
15 with education benefit. The Court in Rowley concluded that the
16 IDEA does not require school districts to provide students with
17 disabilities the best education available or to provide instruction
18 or services that maximize the student’s abilities. The Court
19 stated that school districts are required to provide only a “basic
20 floor of opportunity” that consists of access to specialized
21 instruction and related services which are individually designed
22 to meet the student’s unique needs and provide the student with
23 education benefit. Id at 207–208. See also Dept. of Educ., State
24 of Hawaii v. Katherine E. 727 F2d 908 (9th Cir. 1984), which held
25 that school districts are not required to maximize the potential

1 of, or provide the best possible education to, each student with a
2 disability.

3 To determine whether a school district has offered a
4 student a free appropriate public education the Court in Rowley
5 established a two-part test: (1) Has the district complied with
6 the procedures set forth in the Act, and (2) was the IEP
7 reasonably calculated to enable the student to receive
8 educational benefit? *Id* at 206–207.

9 The first part of the test deals with procedural compliance
10 and is not applicable to this case and was not raised by Parent.

11 As to the second part of the Rowley test – education
12 benefit – the analysis must focus on the adequacy of the
13 district’s programs. Gregory K. v. Longview Sch. Dist., 811 F2d
14 1307, 1314 (9th Cir. 1987). If a district’s program addresses the
15 student’s unique needs, provides educational benefit, and
16 comports with the IEP, then the district has offered a free
17 appropriate public education even if the parents prefer another
18 program and even if the parent’s preferred program would likely
19 result in greater educational benefit. *Id* at 1314. The Ninth
20 Circuit has also opined that the “actions of the school systems
21 cannot be judged exclusively in hindsight” and in determining
22 the appropriateness of an IEP one must consider what was and
23 what was not “objectively reasonable...at the time the IEP was
24 drafted.” Adams v. State of Oregon, 31 IDELR 130 (9th Cir. 1999).
25 A party dissatisfied with a proposed educational plan may

1 challenge it in an administrative hearing in which that party bears
2 the burden of proving the plan to be inadequate. Shaffer ex rel.
3 Shaffer v. Weast, 126 S.Ct. 528,537. 163 L.Ed 2d 387 (2005).

4 Although it should be noted that in the state of Nevada, the
5 District bears the burden of proving the plan to be adequate.

6 In deciding this case, the Hearing Officer will proceed
7 through the stated issue.

8
9 **ISSUE 1: Did the District fail to provide FAPE to Student by**
10 **refusing to include 9 hours of community based instruction**
11 **with a “job coach”, and allow her to continue to participate in**
12 **regular school instruction and activities?**
13

14
15 In the Notice of Intent to Implement IEP dated 5/21/15,
16 the District proposed to implement the IEP date 5/21/2015
17 which stated: “provide special education services in the self
18 contained setting, ESY services, and speech services, and 810
19 minutes a semester of community based instruction.” (J 5E p.17)
20 The Notice continued that this proposal was made, “Based on the
21 present levels & goals/benchmarks in the IEP the team feels that
22 the provided vocational time on the SDI page is appropriate to
23 meet (Student’s) needs (200 m/m in class, 225 m/m on campus,
24 and 810 m/sem in the community). According to the SLP notes
25 and observations, Student is making progress.” (J5 E p. 17(2).
The Notice continued by noting, “The District refuses to take the

1 following requested action(s): Parent requested the school
2 provide more than 810 minutes of vocational time in the
3 community setting and provide direct speech services.” (J 5 E p.
4 17 (3)). The District refused to provide those additional requests
5 by Parent because, “Based on the present levels and goals/
6 benchmarks the team feels that the time provided for vocational
7 skills in the community is appropriate. Based on SLPs notes and
8 observations the team feels that consult services are
9 appropriate.” (J 5E p.17(4)) The Notice continued in explaining
10 why the team rejected Parent’s request by stating, “More time on
11 community based instruction and direct services for speech
12 would cause Student to miss class time which is also needed.
13 The team feels that the amount of time in the IEP is sufficient for
14 meeting (Student’s) goals and benchmarks. (J 5E p. 17 (6)) The
15 team based it’s refusal of Parent’s request on, “review of previous
16 IEP and multidisciplinary team reports, teacher informal and
17 formal assessments, student work samples, teacher observations,
18 SLP notes and observations, input from parent notes and
19 observations from SLP present levels of IEP” (K 5E p. 17(7))
20

21 Subsequently, Parent requested and District approved the
22 services of an Independent Evaluator, paid for by District. The
23 Independent Evaluator prepared a report. (J 4)

24 In the Parental Prior Notice of District Proposal, sent
25 8/26/15 (J 5E p.6), the District referred to the Parent’s request
for an IEP to consider the Vocational Independent Education

1 Evaluation. The Parental Prior Notice of District Proposal sent on
2 10/7/15 (J 5E p.10) indicated that the District proposed to
3 “Review/revise Individualized Educational Program (IEP)”, and
4 “Develop transition services and/or postsecondary goals
5 beginning at age 14”. On 10/16/15, the District sent a “Notice
6 of Intent to Implement IEP” (J 5E p. 11) to Parent indicating that
7 the District proposed to implement an IEP at the IEP Team
8 meeting scheduled for 10/9/15, for 2015–2016: “Self-
9 Contained English, Math, Behavioral/Social Skills, Vocational
10 Skills on campus, Vocational Skill Community.”

11 In the IEP of 10/9/15 the team summarized the IEE as
12 follows: “This learner requires the implementation of training
13 goals indicated above in the natural environment vocational
14 setting. While some pre-requisite skills may be taught in the
15 classroom or clinical setting, it is clear that many prior taught
16 skills have not generalized to the vocational work setting.
17 (Student) may benefit from a job coach working with 1:1
18 teaching the needs identified above. This person should be able
19 to fade out when (Student) is able to demonstrate these skills
20 independently and when (Student) develops more confidence in
21 (Student’s) abilities. It is suggested that the person over-seeing
22 the implementation of this program have a background or
23 experience with applied behavior analysis. This person should
24 have experience with prompting and fading, discrete trial
25 teaching, and natural environment teaching. Ideally, a Registered

1 Behavior Technician (RBT) who has already received 40 hours of
2 training in ABA methodology would be an appropriate candidate
3 to deliver 1:1 job coaching services. (Student) has been exposed
4 to great opportunities for vocational readiness. (Student) will
5 excel with proper on-site instruction targeting work specific
6 goals.” (J 5E p.14)

7 In considering the recommendations of the IEE, the IEP
8 Team stated, “Due to (Student’s) deficits in social and behavioral
9 skills (Student) will have difficulty with interviewing skills,
10 following multi-step directions, working independently and
11 working in a group.” (J 5E p. 14)

12 The IEP Teams prepared an Individualized Educational
13 Program – Transition, which included the following: “(Student)
14 requires a functional course of study.” The IEP Team included a
15 Statement of Transition Services Coordinated Activities which
16 included the following: “CCSD will provide (Student) with
17 instruction in social and language skills to prepare for
18 employment.” Related Services: “CCSD will provide (Student)
19 with consultative speech and language services to provide
20 assistance with community based instruction.” Community
21 Experiences: “CCSD will provide (Student) community based
22 instruction by providing exposure to potential employment
23 opportunities and networking with new potential employers.”
24 Employment and Other Post-School Adult Living Objectives:
25 “CCSD will provide (Student) with opportunities to practice

1 interviewing and social employment rules through mock
2 interviews with community employers, role play, and community
3 based instruction.” Acquisition of Daily Living Skills and
4 Functional Vocational Evaluation: “CCSD will provide (Student)
5 with instruction in time and money management skills.” (J 5E p.
6 16)

7 The IEP of 10/9/15 continues in proposing to provide
8 Student with goals and Short-Term Objectives and Benchmarks in
9 areas of appropriate work related skills of “conversation”. (J 5E p.
10 17), “Completing Job Applications” (J 5E p. 18), “Real-world
11 mathematical problems” (J 5E p. 19), “Analyzing text, documents
12 and work samples”, and “Use of domain-specific words and
13 phrases required for use in the community.” (J 5E p.20)
14 “Self advocacy skills” needed for class-room and community
15 situations, completing multi-step directions using job specific
16 directions for job assignments. (J 5E p.21) and decision making
17 without the use of prompts. (J 5E p. 22)

18 Other than Parents concerns over community based
19 instruction, the Parties agree that the IEP meets the Needs and
20 Goals for the Student. The Special Education Instructional
21 Facilitator at High School, the Transition Specialist for the Student
22 Services Division of Clark County School District, The Coordinator
23 for Seigle Diagnostic Center and Students Special Education
24 Teacher all concluded that the program for Student established in
25 the IEP of 10/9/15 were appropriate to meet the needs of

1 Student and were of educational benefit.

2 Parent testified that the Goals and Objectives of the IEP of
3 10/9/15 were appropriate for Student, but disagreed with the
4 IEP's refusal to follow the recommendations of the IEE. Parent
5 did not disagree with the Student's needs and the IEP Team's
6 Objectives to meet those needs, but disagreed with the amount
7 of Community Based Instruction provided by the IEP. The
8 Parent's position was that the Student should continue in the
9 current High School to complete Student's senior year, and in
10 addition, participate in Community Based Instruction of nine
11 hours per week.

12 Even though the additional nine hours of community
13 based instruction, beyond the instruction offered by the District
14 may provide exceptional benefit to Student, and, as characterized
15 by the IEE to be the "best" program for Student, District is not
16 required to offer the "best" program. See Rowley and Katherine
17 D. supra. The Hearing Officer concludes that the IEP Team's plan
18 including the goals, objectives and special education services
19 specified in Student's October 9, 2015 IEP were reasonably
20 calculated to meet Student's unique needs, and designed to
21 confer educational benefit.

22

23

24

25

**Have the IEP Goals and Objectives Been Educationally
Beneficial to the Student?**

1 In County of San Diego v. California Special Education
2 Hearing Office, 93 F3d. 1458; 24 IDELR 756 (9th Cir. 1996) , the
3 Court held that “educational benefits” should include
4 “educational instruction specially designed to meet the unique
5 needs of the handicapped child, supported by such services as
6 are necessary to permit the child to benefit from the instruction.”
7 The impetus of the decision was that the District is required to
8 show progress by the Student, not merely show that the program
9 was reasonably calculated to provide the child with educational
10 benefit.

11 The Student has made progress pursuant to the goals of
12 the IEP. The IEP Team recognized that the Student needed basic
13 skills at a functional level, and has provided that through in-
14 classroom and out of classroom education activities.

15 Progress has been seen according to the SLP notes which
16 stated: “According to the SLP notes and observations, Student is
17 making progress.” (J 5E p.17(2)

18 One goal the IEP addressed was, “By annual review date
19 on the school campus, (Student) will complete job duties specific
20 to the job assignment, achieving a criteria of 8 out of 10 trials as
21 measured by observation as implemented by Special Education
22 Teaching Staff.” (J 5 E p. 21) In her testimony, Student’s Special
23 Education teacher said that she noted that Student lacked some
24 basic organization skills when given a task. The teacher testified
25 that she noticed Student was unable to organize the task of

1 cleaning tables in the lunch room. The teacher discussed
2 organizational strategies of the specific task so that the Student
3 might be more efficient in completing the task. The Student
4 began to understand the concept of organizing a task and
5 thereafter cleaned the tables in an orderly and efficient way. (See
6 testimony of Spec. Ed. teacher)

7 The school recently initiated a program entitled "School
8 Related Work Experience". (D 10 pp. 1-13) The Student was
9 assigned the "Custodial" phase of this program. The periodic
10 reports show that on 10/16/15 and 10/20/15, Student scored a
11 "2" "Moderately Skilled – Individual can perform task completely
12 with limited supervision", on three to four categories. From
13 10/26/15 through 12/11/15 Student scored "5", the highest
14 score on the scale which indicated, "100% Highly Skilled –
15 Individual can perform task independently." This report indicated
16 Student progress for that task.

17 Student also showed improvement in "Workplace
18 Competency by scoring a "5" in three out of five areas. On
19 10/26/15 and thereafter Student scored "5" in all five areas of
20 competencies. Student showed measurable improvement in
21 areas of "Initiative" and "Judgment". (D 10 pp. 1-13)

22 Another Goal set by the IEP Team in the IEP of 10/9/15
23 was, " will engage in conversation achieving criteria of 80%
24 as measured by observation as implemented by Special Education
25 Teacher ant staff". (J 5E p.17)

1 In the 10/9/15 Multidisciplinary Report, the Painting
2 teacher observed the following progress of Student: "Sometimes
3 (Student's) voice is too loud for the classroom. Ms. Krystal and I
4 ask Student to use Student's indoor voice. (Student) has been
5 very good about lowering voice," an improvement in an
6 important social skill.

7 In the 10/9/15 IEP another Goal the Team addressed was,
8 "(Student) will make decisions without relying on prompts,
9 achieving a criteria of 8 out of 10 trials as measured by
10 observation. The painting teacher continued her report to the
11 multi-disciplinary team by saying: "I am working with (Student)
12 on primary colors (red, yellow, blue) and secondary colors
13 (orange, purple, green). I am not sure if Student understands
14 this concept. (Student) was given an alternate assignment
15 (scaled down with reduced colors). (Student) used a printed color
16 wheel as a guide and Student colored and painted (watercolors)
17 to match the guide/template. (Student) did a very good job.
18 Again, Student needs some guidance but was able to do
19 actual art work on her own." (J2 p.27)

21 The Hearing Officer finds that the IEP Team's conclusions
22 and decisions on October 9, 2015 were appropriate and
23 educationally beneficial for Student.
24
25

Suggested Placement Alternatives:

1 that the program for the Student stated in the IEP of 10/9/15
2 provided the Student with FAPE, The District made several
3 suggestions in order to work with the Parent to provide the
4 Student with additional community based instruction. One such
5 program was the District's PACE program. The District's Project
6 Facilitator testified that he established the PACE program in order
7 to accommodate students in achieving an intensive community
8 based program while still in High School. In this program, the
9 Student would receive much more community based instruction
10 than was recommended by the Independent Evaluator. The
11 program also offers a "job coach" who could assist the Student,
12 on a one to one basis, initially in learning a new job. The Parent
13 rejected this program for two reasons: 1) It would require the
14 Student to relocate to another high school campus for the
15 Student's final semester in school, and 2) There was no
16 guarantee that the "job coach" would be a Registered Behavior
17 Technician (RBT). This RBT requirement of the "job coach" was
18 recommended by the IEE. (J4 p.15)

20 Students with disabilities have a right to the availability of
21 free appropriate public education. 20 U.S.C. section 1400 (d).
22 The Court in Rowley concluded that the IDEA does not require
23 school districts to provide student with disabilities the best
24 education available or to provide instruction or services that
25 maximize the student's abilities. The Court stated that school
districts are required to provide only a "basic floor of

1 opportunity” that consists of access to specialized instruction
2 and related services which are individually designed to meet the
3 student’s unique needs and provide the student with education
4 benefit. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982) Id at 207,
5 and Dept. of Educ. State of Hawaii v. Katherine D. 727 F2d 908
6 (9th Cir. 1984).

7 In his testimony the Independent Evaluator testified that
8 notwithstanding the adequacy of the District’s program, the
9 program he was recommended for the Student was the “best”
10 program.

11 It appears to the Hearing Officer that the horns of a
12 dilemma have to do with the Student receiving a higher amount
13 of community based instruction, without missing those important
14 “pre-job training lesson”, offered in the H.S. classroom. Such a
15 program is available with the PACE program, which incorporates
16 both the classroom training and on the job work experience, but
17 Parent is unwilling for the Student to give up the remainder of the
18 Senior Year at the current High School in order to participate in
19 PACE.
20

21 The Hearing Officer concludes that the IEP Team’s plan
22 including the goals, objectives and special education services
23 specified in Student’s October 9, 2015 IEP were designed to meet
24 Student’s unique needs, and designed to confer education
25 benefit. The Hearing Officer finds that the IEP Team’s
conclusions and decisions on October 9, 2015 were appropriate

1 and educationally beneficial for the Student. The Hearing Officer
2 concludes that the District did not fail to provide FAPE to Student
3 by refusing to include 9 hours of community based instruction
4 with a “job coach”, and allow Student to continue to participate in
5 regular school activities.

6
7 **Comparison of the Independent Educational Evaluation with**
8 **the District’s IEP of 10/9/15**

9 Due to the fact that the Parent wanted Student to receive
10 more community based instruction than the IEP Team agreed to
11 provide, Parent requested an Independent Evaluator to evaluate
12 Student and provide a report of the issues. District agreed that
13 Parent could procure an Independent Evaluator at District’s
14 expense.
15

16 **The IEE**

17 The Independent Evaluator conducted an evaluation of
18 Student that was completed on 7/22/2015. (J 4) The
19 Independent Evaluator did opine that Student needed more
20 community based instruction than was being offered by the
21 District due to the fact that “The services she currently receives
22 do not appear to be adequately generalizing to the work
23 environment.” He recommended that “(Student) should have no
24 less than 3 days of after school work in a vocational setting..(with
25 1:1 support indicated in the plan). Each work session should be
no less than 3 hours for a recommended total of at least 9 hours

1 a week. Less than 3 days a week may not be enough to maintain
2 consistency, continuity of care and may hinder
3 generalization.” (P 5)

4 **The IEP**

5 The IEP gave due consideration to the IEE report, and emphasized
6 those special skills the Student need prior to beginning an
7 intensive community based instructional program.

8 Student’s Special Education teacher implemented a
9 program in the High School that provided work–experience
10 related activities, as well as community based activities.
11 Although this newly initiated program was developed to meet the
12 needs of other Special Education students, it fit the unique needs
13 of this Student.
14

15 This program provided work experiences within the
16 school in several areas (one area per quarter). This program gave
17 the Student an opportunity to apply different work–related
18 strategies to the “in–school” work program, and gave the Special
19 Education teacher an opportunity to work on any specific work–
20 related deficiencies noted in Student while working on tasks in
21 specific work–related areas.

22 Going from one task to another without prompting is a
23 concern addressed in the IEE. The current Special Education
24 teacher believes that the Student needs to develop this skill in
25 school so that Student can transfer this information and skill
from the school work areas to the community work areas.

1 Another area of concern mentioned in the IEE was “real
2 world” tasks in applying for a job. In school, the teacher is able
3 to work with the Student in the classroom, through filling out job
4 applications, and going through mock interviews in order to
5 prepare the Student for a “real world” job. (J 5D p.34)

6 Appropriate interaction through conversation with others
7 is another important goal for Student to achieve. (J 5 p. 35) This
8 is a skill that is practiced in a school setting and in a workplace
9 setting pursuant to the IEP of 10/9/15. (J 5 D p.35)

10 The IEP Team, although they believed the community
11 based instruction was vital for the Student, felt it was premature
12 to place Student in a community based work environment for
13 long periods, if it meant that Student would miss classroom
14 instruction on the basic elements needed to succeed.

15 The Project Facilitator for the District testified that he
16 cross-referenced the IEE and the IEP. He was asked, “Do you
17 believe that all or most of the goals in this IEE are addressed in
18 the IEP that was conducted in October?” (See testimony of Brad
19 Keating p.59) Mr. Keating answered, “Yes, they are.” (See
20 testimony of Brad Keating p.60). Mr. Keating continued, “All of
21 the goals and objectives of the IEE I believe were addressed in the
22 revision of the IEP in October.” (See testimony of Brad Keating
23 pp. 60–61)

24 From the IEP, from testimony, and from other reports, the
25 Hearing Officer is persuaded that the District and particularly the

1 IEP Team considered carefully the recommendations of the
2 Independent Evaluator.

3 **In Conclusion**

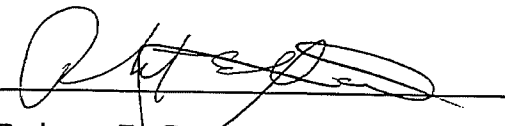
4 The Hearing Officer was very impressed by the passion of
5 the Parent in attempting to reach the best possible learning
6 environment for the Student. She is to be applauded for her
7 knowledge of the law and her tenacity in pursuing the best
8 learning experience for her child.

9 **Order**

10 The Clark County School District has offered and provided
11 Student with a free appropriate public education in accordance
12 with the IDEA and Nevada State Law and Regulations. Therefore
13 all relief requested by Petitioner is denied.
14

15
16 IT IS SO ORDERED.

17 Date: 12/29/15

18 
19 Robert E. Gaston, Hearing Officer

20 **NAC 388.315 A party may appeal from the decision of a**
21 **hearing officer made pursuant to NAC 388.310 within 30 days**
22 **after receiving the decision. A party to the hearing may file a**
23 **cross appeal within 10 days after he receives notice of the**
24 **initial appeal. If there is an appeal, a state review officer**
25 **appointed by the superintendent shall conduct an impartial**
review of the hearing.